IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CEA No.184 of 2005
Date of decision: 7.9.2006

Commissioner, Central Excise, Chandigarh-I

...Appellant

v.

M/s A.R.Alloys, Mandi Gobindgarh, District Fatehgarh Sahib

...Respondent

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Gurpreet Singh, Central Govt. counsel for the appellant.

Mr. Akshay Bhan, Advocate, for the respondent.

JUDGMENT:

This appeal has been preferred proposing following substantial questions of law:-

> "Whether under Compounded Levy Scheme 'mandatory penalty' equal to outstanding duty imposed under Rule 96ZO(3) of erstwhile Central Excise Rules, 1944 can be waived or reduced?"

Facts noticed by the Tribunal are as under:-

> "2. The appellants were working under Compounded Levy Scheme for the period 1998-2000. It was required to discharge the duty liability on fortnightly basis. There was some delay in making payments. The delay also occurred in respect of several fortnights. The appellants

made payment of duty along with interest for the delay. Subsequently, in August 2004, a notice was issued by the Excise authorities proposing penalty on the appellants for the delay which took place during the period 1998-2000. That penalty is under challenge in the present appeal.

3. Learned counsel submitted that the delay in payment of duty was on account of financial distress, which ultimately led to the sale of the unit in 2002. It is also being pointed out that the Revenue was not at any loss since interest for the delay has already been paid."

The Tribunal following judgments of the Madras High Court in **Wilco & Company v. Union of India,** 2003 (151) ELT 49 and Bombay High Court in P**arekh Shipping Corporation v. Assistant Collector of Customs, Bombay,** 1995 (80) ELT 781, held that proceedings for penalty having been initiated after undue delay and having regard to circumstance that the unit itself had been disposed of, the penalty was not justified.

We have heard learned counsel for the parties.

We have already held in **Commissioner, Central Excise Commissionerate, Ludhiana v. M/s K.C.Alloys & Steel Castings, Ludhiana,** CEA No.77 of 2005, decided on 3.8.2006 that imposition of penalty under Rule 96ZO(3) of the Central Excise Rules, 1944 is not the minimum but is at the discretion of the authorities. The discretion, having been exercised in a given fact situation, is not shown to be perverse.

Accordingly, we are unable to hold that any substantial question of law arises.

The appeal is dismissed.

(Adarsh Kumar Goel)
Judge

September 7, 2006 (Rajesh Bindal)
'gs' Judge